Testimony of
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Before the
House Ethics and Elections Committee
Wednesday, May 26, 2010
On
H.B. 6182, 6183, 6184, 6185, 6186, 6187 and 6188

Madame Chair and Members of the Committee:

Everyone can support H.B. 6182, because it applies across the board to corporations, labor unions, and domestic dependent sovereigns. Pass that bill, break the tie-bars and that legislation will bring the Michigan Campaign Finance Act into accord with the recent U.S. Supreme Court's ruling in *Citizens United* v. *FEC*.

The other six bills in this package only apply to corporations, purposely omitting labor unions and Indian Tribes from their coverage. I suppose the MEA fits into that corporate category as well as Planned Parenthood, the Sierra Club and the Michigan Association of Trial Lawyers. But its principal aim is to deter – if not intimidate business-- from exercising its rights in the political process. Much in those six bills is, on its face, unconstitutional. For example, H.B. 6185 contains a ban on independent expenditures by insurance companies and utilities. Where in the *Citizens United* opinion do you find any constitutional basis for banning independent expenditures by categories of businesses?

Then we have a ban on corporate independent expenditures by companies who even take advantage of a tax credit in preparing their Michigan Business Tax Return. How dubious is its constitutionality? This is like saying if you itemize your deductions on your Federal 1040 tax return; you are banned from making political expenditures. I am anxious to see how zealously the MEDC informs business prospects that, if they expand or move to Michigan, they must park their First Amendment Rights at the door. I look forward to seeing a Jeff Daniels ad explaining those provisions.

I see all sorts of constitutional objections to the bill which provides that a majority of shareholders must give affirmative consent 30 days before an ad is run and the requirement that the Secretary of State be provided with the details of the ad buy five days before the ad is run. Can anyone say "prior restraint"? The "Stand by Your Ad" bill that requires the photo or voice of the company president in the disclaimer probably would have encouraged Lee Iacocca to have his company make independent expenditures, but why this requirement excludes independent expenditures made by labor unions shows the bill's real purpose.

If a corporation's shareholders, who are free at anytime to sell their stock, must give their pre-approval for a corporate independent expenditure, why not labor union members, who in Michigan, are required to pay dues to their union as a condition of employment, not also given the same pre-approval rights for labor union independent expenditures?

Let's call this package for what it really is: A shameless attempt to intimidate the business community from the exercise of its First Amendment Rights.

I know several of you do not agree with the *Citizens United* decision. But, how out of the mainstream is the decision when the AFL-CIO and the ACLU filed Amicus Briefs in support of Citizens United. Regardless of your personal opinion of the decision, it's now the law of the land. Something you swore to uphold in your oath of office. Many Southern state legislatures in the 1950's after *Brown* v. *Board of Education* passed all sorts of goofy laws attempting to nullify the effects of that U.S. Supreme Court decision.

Since the *Citizens United* decision was issued there have been many hysterical claims that if corporations were to just spend a fraction of their profits they could be spending billions in independent expenditures. But, imagined horribles, does not a legal record make. Here is the record in Michigan of corporate political activity.

The Michigan Department of Energy, Labor and Economic Growth (DELEG), reports that 1,250,000 corporations, non-profit corporations, professional corporations, limited liability companies, limited liability partnerships are registered with them. The same alarmists back in 1976 when the MCFA was enacted may have made the very same arguments about the potential of 1,250,000 corporate PACs overwhelming the political process.

When in fact, just 400 corporations and non-profit corporations have formed Political Action Committees in Michigan. Only 79 of those 400 PACs raised more than $50,000 in the 2008 election cycle. None of the for-profit corporate PACs made any independent expenditure in the 2008 election cycle. Seven non-profit corporate PACs made independent expenditures. On average they made $15,917 in independent expenditures. The top spender in independent expenditures in 2006 and 2008 was Jon Stryker's Coalition for Progress. In those two election cycles Jon Stryker and his sister Pat Stryker contributed nearly $10 million to Coalition for Progress whose spending was principally independent expenditures supporting or opposing candidates to the state legislature.

Many of the sponsors of today's bills have expressed concern that corporate spending will simply overwhelm the political process. Many of those same voices were the recipients of Jon Stryker's spending.

Let me offer this primer on independent expenditures. The U.S. Supreme Court back in 1976 in *Buckley* v. *Valeo* said independent expenditures by individuals were constitutionally protected speech under the First Amendment. Congress in 1974 had limited independent expenditures by individuals to no more than $1,000. *Buckley* invalidated that $1,000 limit.

In 1985 the U.S. Supreme Court invalidated a $1,000 independent expenditure limit imposed on Political Action Committees in *NCPAC* v. *FEC*. Jon Stryker's independent expenditures are constitutionally protected speech under the First Amendment. No matter how badly a future legislature and Governor may want to limit independent expenditures by Jon Stryker, his speech is constitutionally protected. Laws limiting the amount an individual could contribute to a PAC or a Political Party Committee could be enacted, but Jon Stryker instead

of funding one PAC with $5 million could fund a thousand PACs at $5,000 each. Each PAC, in turn, could make independent expenditures.

The legislature could enact an overall contribution limit on individuals to let's say $200,000 an election cycle on all contributions made by that individual to all candidate committees, political party committees and PACs. But that individual would be free to spend an unlimited amount of his or her funds above that contribution limit on independent expenditures supporting or opposing candidates protected by the *Buckley* decision.

Citizens United adheres to the same constitutional principles laid down by the U.S. Supreme Court in *Buckley, Belloti* and *NCPAC*. Without a record that demonstrates independent expenditures have corrupted the candidates they support, any bills you pass banning independent expenditures or inhibiting the making of independent expenditures based solely on the corporate identity of the speaker are most assuredly unconstitutional.

This Campaign Finance Package reminds me of another Mark Brewer- inspired effort, the Reform Michigan Government Now! Petition Drive of 2008. The bottom line of that ballot proposal was in its infamous power point presentation, whose title slide said it all, "Government Reform Proposal: Changing the rules of politics in Michigan to help Democrats." That very same title applies to those six bills in this package that only impose restrictions on corporations, yet pointedly exclude from the very same restrictions labor unions.